4-1800-5947-1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Amendment of the Department of Human Services Rule Governing Parental Fees for Children Placed in 24-Hour Care Outside the Home or whose Eligibility for Medical Assistance was Determined without Consideration of Parental Income or Assets, Parts 9550.6200 to 9550.6240, and the Rule Governing Relative Responsibility under Medical Assistance, Parts 9505.0075.

RERORT OF THE ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:00 a.m. on Tuesday, January 21, 1992 at the Minnesota Department of Human Services, 444 Lafayette Road, Room 1A, St. Paul, Minnesota 55155. This Report is part of a rule hearing proceeding held pursuant to Minn. Stat. 141.131 - 14.20 to determine whether the Agency has fulfilled all relevant substantive and procedural requirements of law, whether the proposed amendments are needed and reasonable, and whether or not the amendments, as modified, are substantially different from those originally proposed.

Patricia Sonnenberg, Special Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155, appeared on behalf of the Minnesota Department of Human Services (DHS or Department). Appearing and testifying in support of the proposed rule amendments on behalf of the DHS were: Laura Plummer, Rules Division; Suzanne Pollack, Children's Services; Lisa Knazan, Health Care Management; Theresa Woods, Reimbursement Division; and Tyrone Guzman, Reimbursement Division.

The Commissioner of the Department of Human Services must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. 14.15, subd. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Administrative Law Judge determines that the defects have been corrected. However, in those instances where the Chief Administrative Law Judge identifies

defects which relate to the issues of need or reasonableness, the Commissioner
may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Commissioner does not elect to
adopt the suggested actions, she must submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment.

If the Commissioner elects to adopt the suggested actions of the Chief Administrative Law Judge and makes no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, then the Commissioner may proceed to adopt the rule and submit it to the Revisor of Statutes for a review of the form. If the Commissioner makes changes in the rule other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, then she shall submit the rule, with the complete record, to the Chief Administrative Law Judge for a review of the changes before adopting it and submitting it to the Revisor of Statutes.

When the Commissioner files the rule with the Secretary of State, she shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural-RequireMents

1. On October 18, 1991 , the Department fi led the following documents with the Chief Administrative Law Judge:

(a) A copy of the proposed rules certified by the Revisor of Statutes.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(e) The Statement of Need and Reasonableness.
(f) A Statement of Additional Notice.
(g) A fiscal note.

The hearing on this matter was initially scheduled to be held on December 19, 1991. However, that hearing date was cancelled and this matter was rescheduled to be heard on January 21, 1992.

2. On November 18, 1991, a Notice of Hearing and a copy of the proposed rules were published at 16 State Register pages 1208 through 1221 with respect to the December 19, 1991 hearing date. On December 16, 1991, a Notice of Cancellation and Rescheduling of Hearing and a copy of the proposed rules were published at 16 State Register pages 1482 through 1494, which set the new hearing date for January 21, 1992.

3. On November 13, 1991, the Department mailed the Notice of Hearing (for the December 19, 1991 hearing) to all persons and associations who had registered their names with the Department for the purpose of receiving such

notice. On December 3, 1991, the Department mailed the Notice of Cancellation and Rescheduling of Hearing to all of the same persons and associations.

4. On December 17, 1991, the Department filed the following documents with the Administrative Law Judge:

(a) The Notice of Hearing as mailed and the Notice of Cancellation and Rescheduling.

(b) The Agency's certification that its mailing list was accurate and complete.

(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.

(d) An Affidavit of Additional Notice.

(e) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

(f) A copy of the State Register containing the proposed rules.

(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 15 State Register page 2352 (April 29, 1991) and a copy of the Notice.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The period for submission of written comment and statements remained open through February 10, 1992, the period having been extended by Order of the Administrative Law Judge to 20 calendar days following the hearing. The record closed on February 13, 1992, the third business day following the close of the comment period.

Statutory Authority

6. Statutory authority to adopt the proposed rule amendments is contained in Minn. Stat. 252.27 and 256B.14. Both of these statutory provisions require the Commissioner of Human Services to adopt rules which establish the financial responsibility of parents for 24-hour care services outside the home for children who have mental retardation or a related condition, or a physical or emotional handicap. Minn. Stat. 252.27, subd. 2a.(b) establishes a schedule of rates for determining the parental contribution. Minn. Stat. 256B.14, subd. 2 states that the rules "shall not require payment or repayment when payment would cause undue hardship to the responsible relative or that relative's immediate family."

Fiscal Impact anf Fee Setting

7. The Department prepared a fiscal note which estimates the anticipated costs to local and state government in the next two years if these proposed amendments are adopted and implemented. DHS estimates that the cost to local units of government will be nothing and that the impact on the state will be cost savings.

8. Pursuant to Minn. Stat. 16A.128, the approval of the Commissioner of Finance for establishment of the fees herein is contained in the Statement of Need and Reasonableness and is dated February 22, 1991. In addition, a copy of the Notice and the proposed rules was sent to the Chairs of the House Appropriations Committee and Senate Finance Committee on December 2, 1991

pursuant to subdivision 2a. of Minn. Stat. 16A.128.

NAture of the proposed Rule Amendments

9. These proposed rule amendments revise standards for the assessment and collection of fees from the parents of children placed outside the home in

24-hour care. These children may be in a variety of placement settings ranging from a state hospital or residential treatment facility to a nursing home or foster home. These rules apply to children who: have mental retardation or a related condition; have a severe emotional disturbance; have a physical disability; or are in a state facility. In addition, the rules apply to children who are in their own home and receiving home and community-based services under U.S. Code Title 42, 1396, or are receiving services under a federal medical assistance waiver.

10. Some of the proposed rule provisions received no negative public comment and were adequately supported by the Statement of Need and Reasonableness. The Judge will not specifically address those provisions in the discussion below and specifically finds that the need for and I reasonableness of the proposed rule amendments has been demonstrated. Some of the public comments raised issues beyond the scope of the proposed rule amendments or were legislative-type suggestions designed to improve the rules. As set forth below, many of the concerns raised by the public have been addressed by rule modifications made by the Department at the time of and subsequent to the hearing. The discussion which follows the modifications will only address substantive issues of need, reasonableness or statutory authority which the modifications do not resolve.

Modifications to the Proposed Rules Made by the Department

11. At the time of and subsequent to the hearing on this matter, and after a review of all the written submissions, the Department has modified the proposed rules additionally as follows:

A. Modifications Made at the Hearing:

Part 9505.0075, subpart 1. General requirements; financial obligation of responsible relative.

> In no case shall the financial obligation determined under subpart 3 er-6 for the responsible spouse en-parent exceed the amount of medical assistance ultimately provided the recipient.

Part 9505.0075, subpart 5, item A (1). Consideration of parental income.

> (1) part of a home and community-based waiver under Minnesota Statutes, sections 256B.092 256B.49 or 256B.491; or

lIn order for an agency to meet the burden of reasonableness, it must demonstrate by a presentation of facts that the rule is rationally related to the end sought to be achieved. Broen_Memorial_Home_y,_Minnesota_DepArtment of Human Services, 364 N.W.2d 436, 440 (Minn. App. 1985). Those facts may either be adjudicative facts or legislative facts. Manfactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). The agency must show that a reasoned determination has been made. Manufactured Housing Institute at 246.

Part 9505.0075, subpart 5, item B. Consideration of parental income.

B. If the a child is under age 18 together with

the-parents and is an eligible recipient of supplemental security income parental income must_be considered available in determining the child's eligibility. (Last sentence stricken.)

Part 9550.6200, subpart 2. Exclusion.

Parents of a minor child identified in subpart I must contribute to the cost of services unless the child is married or has been married, parental rights have been terminated, the child's adoption is subsidized according to Minnesota Statutes, section 259.40 or through title IV-E of the Social Security Act, or_the_parents Are determined not to owe a fee under the formula in_ Minnesota Statutes section 252.27, subdivision 2a. .

Part 9550.6220, subpart 14. Fees in excess of cost.

Al the-and of each-state fiscal-year the department-or county board shall review the total cost of services paid by the_department or-county board pot including payments made to school districts for heAlth-services identified in an individualized education plan and covered under-the modical assistance stAte-plan th at the child received during the fiscal year

Part 9550.6226, subpart 1. Request for information.

Parents shall provide any and all information that-is required by-Itt department-or county board as necessary to determine or review the pArentAl fee,

Part 9550.6230, subpart 2, item D. Variance for tax status.

Part 9550.6230, subpart 7. Insurance settlements; settlements in civil actions.

The variance shall terminate or be adjusted-effective on the date of the parent's receipt of any such settlement

A supplemental Statement of Need and Reasonableness was provided for each of the above-modifications. These modifications were made in response to public comment received after the initial publication of the proposed rules and for the purpose of compliance with recent changes in federal and state law. Except
as may be specifically modified below, the Judge finds that the need for and reasonableness of the modifications set forth above has been demonstrated and that none constitute a substantial change to the rules as proposed.

B. Modifications Made Subsequent to the Hearing:

Part 9505.0075, subpart 1. General requirements.

Refusal of responsible parents to provide information needed to determine financial obligation shall result in

notification to the parents-that the depArtMent_or county board_ may institute civil action to recover the required reimbursement pursuant_to_Minnesota statutes section 252.27, subdivision 3 and 256B.14, subdivision.2.

Part 9550.6220, subpart 14. Fees in excess of cost.

If the total amount of fees paid by the parents exceeds the total cost of services, the department or county board shall: (1) reimburse the parents the excess amount if their child is no longer receiving services; or (2) apply the excess amount to parental fees due starting July 1 of the-next that year, unti I the excess amount is exhausted.

Part 9550.6226, subpart 1. Request for information.

The department or county board shall send the parents a form describing: A) the formula_useed to determine .the fee B) how to obtain information-on possible variances from the fee amount-C) information on the circumstanc,5 under which A fee- may be reviewed or determined: D the

right to appeal a fee determination and E) the -the consequences for not complying with a request to provide information when a form requesting for information is sent in the following instances:.

Part 9550.6226, subpart 2. Determination of parental fees.

Failure or refusal by the parents to provide the department or county board within 30 calendar days after the date the request is postmarked, the financial information needed to determine parental responsibility for a fee shall result in the determination-that-the

notification to the parents tht the department or county board may institute civil action to recover,the required reimbursement-pursuant-to Minnesota StAtute.s. sections

252.27. subdivision A.-And.256B.14, Subdivision 2.

Part 9550.6228, subpart 1, item C.

C. when the_department or county billing records on the history of service use, inddicate a disparity between the fee ,mount and the cost of services provided of sixty percept or more.

Part 9550.6228, subpart 3, items C and D.

C. The review of parental fees under subpart 1. item C, shall consist of a review of historical department or county-biling records Parents whose fee is adjusted under-item C-shall sign A-written_Agreement in which thy parents ;grey to report to thy department _or _county boar.d any increase in the amount of services provided.

D, The review of parental fees_ under -subpart 1 item D-shall be done Within ten-calendar days_after the deportment or county board receives complete information that verifies a loss or gain in income in excess of,ten percent.

Part 9550.6229, subpart 2. Decrease in fee.

A decrease in the parental fee is effective in the month that the parents verify that a reduction in income or a change in household size occurred, retroactive to no earlier than the beginning of the current fiscal year.

Part 9550,6230, subpart la, item A. Variances for medical expenditures.

. . . receiving services or for that child's immediate family-member--, parents and pArents' dependents living with-the-ehild when the medical expenditures are not covered by medical assistance or health insurance and are a type irrespective of amount, which would be allowable as a federal tax deduction under the Internal Revenue Code.

Part 9550.6230, subpart la, item B. Adaptations to the vehicle.

B..... which are necessary to accommodate the child's medical needs and are a type, irrespective_of_amount, which would be allowable as a federal tax deduction under the internal revenue code.

Part 9550.6230, subpart la, item C. Physical Adaptations to the Home.

. . . which are necessary to accommodate the child's physical, behavioral or sensory_needs and are a type-irrespective-of mount- that would be allowable as a deductible medical expense under the Internal Revenue Code.

Part 9550.6230, subpart la, item D. Unexpected expenditures.

> D. Unexpected, sudden, or unusual expenditures..... and which are a type, Irrespective of amount_ which would be allowable as a casualty loss deduction under the Internal Revenue Code.

Part 9550.6230, subpart 3, item A. Exceptions.

> A. new home purchases, other than that portion of the cost of a new home that is directly attributable to the physical, behAvioral _or_sensoyy needs of the child receiving services and that is a type irrespective of amount, which would be allowable as a deductible medical expense under the Internal Revenue Code;

Part 9550.6230, subpart 3, items C and D. Exceptions to variances.

> C. clothing and personal expenses, other than expenses allowed in subpart la-such as specialized clothing needed by the child receiving services due to their disability;
>
> D. any items that are usual and typical, other than those which are allowable under subpart la.

Part 9550.6230, subpart 4. Procedures for requesting a variance.

> . . . Parents must cooperate by completing and returning all information requested by the department or the county_ Is necessary to determine or review the parental fee.

Part 9550.6235, subpart 3. Rights pending hearing.

> . . . [second paragraph] of the parental fee. Cost-of The commissioner's . . .

Part 9550.6220, subpart 4. Percentage schedule.

The proposed new language is deleted in its entirety and replaced with:

> the parental-fee shall be cpmputed_accQrding to be formula specified, Minnesota Statutes section 252.27 subdivision 2 a (b). The fee amounts contained from section 252.27, subdivision 2a(b) are added to equal the annual parental fee._ The annual, rental .fees then !!tiled into 12 monthly payments Is specified in subpart j, item E.

Part 9550.6220, subpart 6.D.

> Using the household size, income figures, and parental income deduction in items A, B, and C, refer to the percentage schedule in subpart-4 Minnesota Statutes, section 252.27 subdivision 2a(b) and determine the applicable percentages to be applied to the parents' income.

Part 9550.6220, subpart 6.E.(3).

> multiply remaining income by each applicable percentage schedule in Minnesota 5tatutes, section 252.27, subdivision 2a(b).

Part 9550.6220, subpart 10a.C.

> Using the household size and income figures in item A and B, the percentage schedule in subpart-4 Minnesota Statutes section 252.27. sybdivision 2a(b) must be used to determine the applicable percent to be applied to the parents' income.

The above-modifications were made primarily in response to public comment contained in the record in this matter. In addition, some modifications were made for the purpose of clarity. Except as may be specifically modified below, the Judge finds that the need for and reasonableness of the above-modifications have been demonstrated and that none constitute a substantial change from the rules as initially proposed.

Discussion of the Proposed Rules

12. Minn. Rule 9550.6200, subp. 1b. -- This proposed rule amendment restricts the applicability of the parental fee rules to parents of children in 24-hour care outside the home who have a "severe emotional disturbance". The current rule requires only that the child have an "emotional handicap", which is the language used in Minn. Stat. 252.27, subd. 1. Several individuals and associations strongly object to the more restrictive proposed rule because the effect will be to exclude children with less severe emotional disorders from coverage of this rule and thus force parents to pay a more expensive county fee for services. The Department contends that restricting coverage to children with a severe emotional disturbance is in line with current mental health terminology and consistent with the Children's Mental Health Act found at Minn. Stat. 245.487, et seq.

Minn. Stat. 252.27, subd. la. specifically states that "for the purposes of this section, a child has an 'emotional handicap' if the child has a psychiatric or other emotional disorder which substantially impairs the child's mental health and requires 24-hour treatment or supervision." If the statute did not reference "24-hour treatment or supervision", the Judge would agree that the proposed rule is too restrictive. The statutory definition of "emotional disturbance" found at Minn. Stat. 245.4871, subd. 15 seems to equate with what is meant by "emotional handicap" in Minn. Stat. 252.27, subd. 1. However, the statutory definition of "child with severe emotional disturbance" found at 245.4871, subd. 6 includes treatment and/or supervision factors that are similar to the additional requirement found in Minn. Stat. 252.27, subd. la. Consequently, the Judge finds that the need for and

reasonableness of the proposed rule referenced above has been demonstrated by
the Department. Rather than just reference what the statute provides, the Department has applied comparable terminology used in the mental health industry.

13. Minn. Rule 9550.6220,_subp. 6. -- This proposed rule provision sets forth the methodology to determine the amount of a monthly parental fee. The rule specifically provides for a subtraction from the fee of "the monthly amount of any court-ordered child support payments made by the parent for the child receiving services." This offset is based on statutory language contained in Minn. Stat. 252.27, subd. 2a.(b) which states that "the parental contribution is reduced by any amount required to be paid directly to the child pursuant to a court order, but only if actually paid." Additionally, paragraph (g) of that subdivision also states that "a court-ordered child support payment actually paid on behalf of the child receiving services shall be deducted from the contribution of the parent making the payment." Several individuals and associations, including ARC Minnesota and the Legal Advocacy for Persons with Developmental Disabilities (LAPDD), contend that many counties are currently taking child support payments for themselves rather than functioning as only a pass-through for the obligee pursuant to Minn. Stat. 252.27. ARC and LAPDD argue that counties are not entitled to the child support payments; that the obligees require the child support in order to provide a home for the child receiving services. Both ARC and LAPDD state that the rule should contain a provision requiring that the child support payments go to the intended recipient unless otherwise ordered by the court.

Subpart 13 of Minn. Rule 9550.6220 states that "a court-ordered child support payment actually made on behalf of the child receiving services shall reduce the fee of the parent making the payment." The Department contends that this provision is a restatement of the statutory language and that issues concerning where the child support monies go are not within the scope of the rule. The Department stated that it is not its intent to collect any child support payments which are considered an offset from a parental fee.

Due to the inconsistency of county practice with respect to child support payments and the failure of the rule to delineate clearly what is considered the parental fee, the Judge finds that the Department has not demonstrated the reasonableness of the child support provisions contained in the rule. This issue should be clarified to avoid inconsistent practices and ensure that custodial parents have the resources to which they are entitled for the purpose of raising their children. The Judge discerns no legislative intent to deprive custodial parents of court-ordered child support payments merely because that amount is used as an offset from a parental fee. The Department should make this clear in the rule to avoid misinterpretation of both the rules and statute. In order to correct the defect noted, the Department should amend subpart 6.E.(7) to read:

> subtract the monthly amount of any court-ordered child support payments actually_pail Is directed in_the court order by the parent for the child receiving services.

This amendment is not a substantial change and clarifies that child support payments are not to be diverted by the counties unless ordered by the court.

14. Minn. Rule 9550.6220,_subp, 6.E,(6) -- This proposed rule provision provides for the subtraction of $200.00 from the parental fee if the child receiving services lives with the parents. This offset is based on two

statutory provisions. The first is Minn. Stat. 252.27, subd. 2a.(b) which provides that, "if the child lives with the parent, the parental contribution is reduced by $200.00." The second is contained in Minn. Stat. 256B.14,

subd. 2 which states that for children who receive services but live at home, "the state agency shall take into account the room, board, and services provided by the parents in determining the parental contribution to the cost of care." ARC and LAPDD argue that the "parental contribution" cannot be automatically set at $200.00 per month but must be determined on a case-by-case basis pursuant to the requirements of Minn. Stat. 256B.14, subd. 2. In the district court case of Gonnella v. Dakota County Welfare Board, File No. C8-91-7685, the Honorable Martin Mansur, Dakota County District Court Judge, held that the Department of Human Services must promulgate rules which specifically apply to and address the parental contribution for the care of eligible in-home children rather than implement a minimum $200.00 offset. Judge Mansur stated that the $200.00 parental credit did not take into account the added burden on parents who choose to personally provide for their disabled children at home.

The Department contends that the $200.00 credit established in Minn. Stat. 252.27, subd. 2a.(b) is specifically authorized because Minn. Stat. 256B.14, subd. 2 states that the rules promulgated thereunder "shall be consistent with the requirements of section 252.27 for parents of children whose eligibility for medical assistance was determined without deeming of the parents' resources and income." The Department asserts that the Legislature has determined that $200.00 is the appropriate amount to offset from a parental fee if the eligible child lives with the parent. In addition, the Department cites the district court case of Pritzker v. Minnesota-Department of Human Services, File No. C2-91-007510, in which the Honorable Kenneth J. Fitzpatrick, Judge of Ramsey County District Court, affirmed the Department's use of the statutory parental fee credits without a promulgation of rules to implement a determination of the parental contribution. In Pritzker, Judge Fitzgerald held that the Department was not mandated to promulgate new rules because the terms of Minn. Stat. 252.27, subd. 2a. were self-executing.

Minn. Stat. 252.27 establishes the formula and offsets for a determination of a parental fee. Minn. Stat. 256B.14 also requires a fee but refers to the requirements set forth in section 252.27. Consistency between the statutory provisions is mandated. The Judge finds that adoption of the $200.00 offset is a reasonable interpretation and implementation of

Minn. Stat. 256B.14. Obviously, the Legislature determined that that amount of offset was a reasonable approximation of the parental contribution when the child lived at home. In addition to the $200.00 credit, parents' expenses for the child's unusual needs are considered under the variance provisions in the proposed rules. The Judge finds that the rule referenced above does not conflict with the statute and that it is authorized.

15. Minn. Rule 9550.6220, subp. 8. -- This provision states that "parents may voluntarily pay a fee greater than that determined by the formula in subpart 6." Both ARC and LAPDD argue that this provision is unreasonable and unclear; that any overpayment made by parents can be construed by the Department or counties to be a "voluntary overpayment" and not a mistake or inadvertence requiring a credit. The Department contends that it is easy to discern which kinds of overpayments are voluntary and that no problems will result from implementation of this rule.

Obviously, if parents want to pay more than their prescribed parental fee, no rule authorization is required. The rule seems to suggest, however, that overpayments made by parents are made pursuant to the rule and are thus

.voluntary". The Judge finds that the need for an reasonableness for this rule provision has not been demonstrated. In order to correct this defect, the Department can strike this rule provision or add the following language:

> . . . than that determined by the formula in subpart 6 as long as the voluntariness of the payment is documented in writing.

With this addition, there should be no issue as to the nature of overpayments and the rule is specifically found to be reasonable.

16. Minn, Rule 9550.6220 subp. 10a, -- This rule provision establishes a specific fee for respite care when respite care is the only service the child is receiving. Paragraph E. of the rule states that "any part of a day spent in respite care must be counted as a full day for purposes of this fee." ARC and LAPDD argue that requiring payment for a full day of respite care when only a small part of a day may be used severely limits the flexibility of parents to use respite care. Each group contends that a full day should be broken up into smaller segments so that parents could only pay for a portion of a day used rather than be charged for a full day.

The Department contends that currently, respite care rates vary from county to county and there is no uniform data concerning hourly use. The Department states that requiring all of the counties to use an hourly recording system greatly outweighs the minimal financial impact on parents because the amount of parental fee for respite care calculated on a per diem basis is very small. The Department estimates that under the per diem calculation, a family of five with an adjusted gross income of $75,000 receiving four days of respite care per month would be assessed a monthly parental fee of only $4.00. The Department further states that it is in favor of maximum flexibility but that the administrative burden to compute hourly fees greatly outweighs the need for an hourly use calculation.

The Department's position on this issue is reasonable. Although greater flexibility in the use of respite care is desirable, the proposed fees are minimal for daily use. Breaking the day up into small segments would compound the difficulty in implementing this rule. The Judge finds that the need for and reasonableness of the above-referenced rule provision has been demonstrated.

17. Minn. Rule 9550.6228 subp. 1.D. -- This rule provision provides

that parental fees must be reviewed by the county board or the Department "when there is a loss or gain in income from one month to another in excess of ten percent." The definition of income contained in Minn. Rule 9550,6210, subp. 9 is "the adjusted gross income of the natural or adoptive parents determined according to the previous year's previous tax form as specified in Minnesota Statutes, section 252.27, subd. 2a, paragraph (d), or a verified statement of the adjusted gross income if no tax forms are available," Both ARC and LAPDD argue that it will not be possible for self-employed individuals to show any month-to-month change in income because income is only determined on a yearly basis. LAPDD suggests that the rule specifically provide for the submission of verified statements by self-employed individuals for the purpose of showing an increase or decrease in month-to-month income. The Department contends that because "verified statements" are already included in the definition of income, no modification to the rule is required.

Because the rule specifically allows for a redetermination of the parental fee on less than a yearly basis, some methodology should be prescribed to inform parents how to show a loss or gain in income. Obviously, persons who receive paychecks on a regular basis can easily document increases or decreases in income. However, the self-employed do not usually have the same documentation available. The definition of income referred to above refers only to an "adjusted gross income" which implies that a full year is considered. The Judge finds that absent any clarification in the proposed rule as to what is needed to show an increase or decrease in income, the reasonableness of the rule has not been demonstrated. In order to correct this defect, the Department should add language setting forth what types of documentation will be required to serve as a basis for the reconsideration of a parental fee. This language should specifically speak to the documentation required from self-employed individuals. The Judge recognizes that the income of the self-employed person may vary greatly from month to month. Consequently, the inclusion of a slightly longer time period for the self-employed (rather than only "one month to another") would be appropriate. Language such as the following could be added:

> For self-employed individuals, the loss or gain in income shall be documented over a three-month period of time. Paystubs, signed statements from employers, bank statements or verified statements from the parent shall be furnished to support the request for redetermination. In addition, the county or Department may require other information which is necessary to support the request for redetermination.

As modified, the Judge finds that the need for and reasonableness of the proposed rule referenced above has been shown.

18. Minn. Rule 9550.6230 subp. 1a.c The amendments to this "variance" provision for physical adaptations to the child's home delete the requirement that the adaptations be "minor" in nature. The proposed rule allows for a variance based on expenditures for adaptations to the home, "irrespective of amount", but for only the portion which does not increase the value of the property. LAPDD objects to the "valuation" contingency because the needs of a child may have to be met by modifications to a home which may have the effect of increasing the value of the home. The Department argues that the standard proposed is reasonable and is required to avoid the inconsistent application of the rule.

The Judge agrees that the standard of "increased value" has a rational basis and will allow for a more uniform implementation of the rule. The Judge finds that the Department has demonstrated the need for and reasonableness of the above-referenced rule.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## CONCLUSIONS

1. That the Department gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. 14.14, subds. 1, la and 14.14, subd. 2, and all other procedural requirements of law or rule.

3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i)(ii).

4. That the Department has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. 14.14, subd. 2 and 14.50 (iii), except as noted at Findings 13, 15 and 17.

5. That the amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. 14.15, subd. 3, and Minn. Rule 1400.1000, subp. I and 1400.1100.

6. That the Administrative Law Judge has suggested action to correct the defects cited in Conclusion 4 as noted at Findings 13, 15 and 17.

7. That due to Conclusion 7, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. 14.15, subd. 3.

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this day of March, 1992.

PETER C. ERICKSON
Administrative Law Judge